

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS**

IN RE:)	
)	
DARDEN GRANT CRAWFORD,)	No. 02-80176
)	
Debtor.)	

OPINION

This matter is before the Court on the Chapter 7 Trustee's objection to the Debtor's claim of homestead exemption. The Court heard evidence and took the matter under advisement.

Approximately four years ago, the Debtor, Darden Grant Crawford (DEBTOR), inherited the real estate located at 1026 E. Behrends Avenue, Peoria, Illinois, when his father died. The DEBTOR is the sole titleholder and owns no other real estate. The DEBTOR'S father had maintained the property as rental property and it was occupied by tenants when the DEBTOR inherited it. Those tenants continued to occupy the property and pay rent to the DEBTOR through October, 2001. As of November, 2001, the tenants stopped paying rent and, at some point prior to January 6, 2002, moved out. The DEBTOR was not aware that the tenants had vacated the property until he received a call from Central Illinois Light Company on January 6, 2002, inquiring whether he wanted the utility service transferred into his name, to which he consented.

The DEBTOR lives a somewhat transient lifestyle and, in recent years, has not maintained a permanent residence. He resides with friends and moves around from time to time, paying rent to his host when he can afford it. He uses his mother's house in Peoria as his mailing address, and sometimes stays there as well.

On January 11, 2002, the DEBTOR moved into the Behrends Avenue property. Three days later, on January 14, 2002, he filed his Chapter 7 bankruptcy petition claiming a homestead exemption of \$7,500 in the property, and listing its value at \$30,000. On January 22, 2002, after reviewing the schedules and becoming aware of the scheduled nonexempt equity in the house of \$22,500, the Chapter 7 Trustee (TRUSTEE) sent the DEBTOR'S attorney a letter disclosing his intent to list the property for sale and asking for the DEBTOR'S cooperation. In light of the TRUSTEE'S request and the inevitability of sale, the DEBTOR moved out of the property on January 25, 2002, having resided there for all of fourteen days.

After the first meeting of creditors, the TRUSTEE filed a timely objection to the DEBTOR'S claim of homestead exemption on the basis that his brief occupancy did not entitle the DEBTOR to the exemption under the Illinois Homestead Exemption law. At the hearing on the TRUSTEE'S objection, at which the DEBTOR testified, both parties elicited testimony focusing on the DEBTOR'S intent. The DEBTOR met with his bankruptcy attorney prior to moving into the property and knew that his bankruptcy filing was imminent when he moved in. Though he moved into the house prior to his filing in order to claim the homestead exemption in his bankruptcy case, he had additional reasons for moving in at that time.

The property is in a bad area and the DEBTOR was not comfortable leaving the house vacant for fear of vandalism. The DEBTOR also testified that he moved into the house for financial reasons. The DEBTOR does not hold steady employment. He was rendered partially deaf during a term of service in the Vietnam War and receives disability benefits

of \$200 per month from the Veterans Administration. Prior to November, 2001, he supplemented that income with the rental payments from the tenants occupying the property. When they stopped paying rent and vacated the premises, the DEBTOR could no longer afford to pay rent to his friends and his mother and he decided to move into the property. The DEBTOR testified that but for the TRUSTEE'S sale of the property, he would have continued to reside in the property beyond January 25, 2002, although he probably would not have made the property his permanent residence. Rather, it is likely that he would have fixed up the property and eventually sold it.

After the DEBTOR voluntarily vacated the property on January 25, 2002, the TRUSTEE listed the property for sale with a realtor and has now accepted an offer of \$15,000. After deducting the realtor's commission and closing costs, the TRUSTEE estimates that, if the DEBTOR'S claim of homestead exemption is denied, net proceeds will be available to the bankruptcy estate of approximately \$12,000. If the homestead exemption is allowed, the proceeds available for the benefit of creditors will be about \$4,500. The TRUSTEE has the burden of proving that the exemption is not properly claimed. FRBP 4003(c).

ANALYSIS

The TRUSTEE'S objection has some surface appeal. Until three days before his bankruptcy filing, the DEBTOR had never lived in the property, but had continuously held it as rental property. The DEBTOR moved in just prior to filing in order to establish a claim of homestead exemption and then moved out eleven days after filing. Having scheduled the value of the property at \$30,000 and with a homestead exemption ceiling of only \$7,500, the

DEBTOR must have realized, and indeed at the hearing admitted knowing that the TRUSTEE would sell the property and that he would not be able to continue to reside there. Therefore, says the TRUSTEE, the DEBTOR could not have had the requisite intent sufficient to qualify for the exemption.

Because the Illinois General Assembly has opted out of the federal exemption scheme, Illinois debtors are required to use the exemptions provided by Illinois law. *In re Rosenzweig*, 245 B.R. 836 (Bankr.N.D.Ill. 2000). The Illinois Homestead Exemption statute provides, in material part, as follows:

Amount. Every individual is entitled to an estate of homestead to the extent in value of \$7,500 of his or her interest in a farm or lot of land and buildings thereon, a condominium, or personal property, owned or rightly possessed by lease or otherwise and occupied by him or her as a residence, or in a cooperative that owns property that the individual uses as a residence.

735 ILCS 5/12-901. The homestead exemption statute is liberally construed in favor of homeowners in order to effect its remedial purpose. *People v. One Residence Located at 1403 East Parham Street*, 251 Ill.App.3d 198, 621 N.E.2d 1026, 190 Ill.Dec. 573 (5th Dist. 1993); *In re Wagenbach*, 232 B.R. 112 (Bankr.C.D.Ill. 1999); *Matter of Matthews*, 43 B.R. 466, (N.D.Ill. 1984). The facts at the time of the bankruptcy filing determine whether a debtor is eligible to claim a homestead exemption. *In re Lowder*, 188 B.R. 573, 575 (Bankr.C.D.Ill. 1995). There is no dispute that the DEBTOR owns the property and that he occupied it on the petition date. Focusing on the abbreviated nature of the occupancy, the TRUSTEE questions whether a minimum term of actual occupancy is necessary and whether the DEBTOR must have a particular intent to occupy the premises for some minimum period.

Underlying the TRUSTEE'S argument is whether the DEBTOR'S brief occupancy for the purpose of qualifying for the exemption, somehow amounts to an improper manipulation of circumstances such that the exemption should be denied on equitable grounds. The TRUSTEE argues that the property had always been rental property, that the DEBTOR had never lived there, that he moved in only to establish occupancy as of the petition date, that he knew when he moved in that the property would be sold, and that he moved out within two weeks.

In response, the DEBTOR points out the following:

1. He did not cause the tenants to terminate the lease and vacate the property.
2. The fact that the property was vacant at the same time as his bankruptcy filing was fortuitous.
3. He has no other permanent residence and owns no other real estate.
4. He would have moved into the property, in order to fix it up, even absent his bankruptcy filing.
5. The only reason he moved out so quickly was his desire to cooperate with the TRUSTEE in the sale of the property.
6. He merely took advantage of a situation that presented itself to permit him to claim the homestead exemption.

Exemption claims have been denied where pre-bankruptcy "exemption planning" is tantamount to a fraudulent transfer. *In re Baker*, 273 B.R. 892 (Bankr.D.Wyo. 2002). *Cf.*, *In re Gillissie*, 215 B.R. 370 (Bankr.N.D.Ill. 1997) (trustee's objection to debtor's claim of homestead exemption sustained where title was transferred from joint tenancy into tenancy by the entirety prior to bankruptcy); *In re Sholdan*, 217 F.3d 1006 (8th Cir. 2000) (trustee's

objection to homestead exemption sustained where debtor liquidated almost all of his non-exempt assets to buy a house worth \$135,000 just prior to bankruptcy). Here, however, the DEBTOR made no eve of bankruptcy title transfer or conversion of non-exempt assets. What then did the DEBTOR “manipulate,” if not title or his other assets? The answer must be that he manipulated his occupancy.

The TRUSTEE correctly points out that the DEBTOR moved into the property right before filing so as to establish occupancy, one of the necessary elements of a right to a homestead exemption. Given that exemptions are determined based on the facts as they exist at the time of filing, the DEBTOR argues that a mere snapshot of where he resided on the filing date is sufficient. The Seventh Circuit, interpreting the Wisconsin Homestead Exemption law, indicated as much in *Crocker v. Chakos*, 24 F.2d 482 (7th Cir. 1928). There, the debtor moved into the property just to avail himself of the homestead exemption, and in fact had orally agreed to sell the property prior to filing bankruptcy. Ruling that the debtor was entitled to claim the exemption under Wisconsin law, the court held:

Section 272.20 of the Wisconsin Statutes provides that a home may be selected by the owner thereof in any city, of any quantity of land, not exceeding one-fourth of an acre, and a dwelling house thereon, and occupied by him as such; that it shall be exempt from seizure or sale, and free of any liability in any form for the debts of such owner to the amount and value of \$5,000; that said exemption shall not be impaired by the sale thereof, but shall extend to the proceeds derived from the sale thereof to an amount not exceeding \$5,000 for a period of not exceeding two years, for the purpose of reinvestment in another homestead. Under this statute the Supreme Court of Wisconsin has held that whether or not a homestead exists rests entirely upon the fact as to whether or not the premises were in fact occupied as a dwelling house by the owner and his family. If they were so occupied, then the owner is entitled to the enjoyment and use of them as such. See *Phelps v. Rooney*, 9 Wis. 70, 76 Am.Dec. 244. In *Bartle v. Bartle*, 132 Wis. 392, 112 N.W. 471, the

court allowed an estate of homestead of \$5,000 in property consisting of a hotel, wherein the owner occupied two rooms as a homestead. Here the facts are undisputed that the bankrupt occupied the premises in question as a homestead. It may be that he moved into the property for the express purpose of creating a homestead therein and preventing his creditors from levying upon \$5,000 worth of his property; but it seems to have been the intent of the legislature of Wisconsin that creditors should, wherever a homestead exists, recognize the exemption of the property to the extent of \$5,000, and whether the occupancy was for a long or short period appears to be wholly immaterial. The sole question is, Did the party occupy the property as a homestead? Under the evidence in this case no other conclusion is possible.

24 F.2d at 484-85.

Although neither the Illinois Supreme Court nor any Illinois appellate court has ruled on this issue, the Illinois Homestead Exemption law, like the Wisconsin statute interpreted in *Crocker*, does not place a temporal condition on the residential occupancy. There is simply no express requirement that the property actually be occupied for any particular length of time. Neither does the TRUSTEE cite an opinion, from any jurisdiction, where a court has denied a homestead exemption claim based upon a debtor's manipulation of residential occupancy.

Whether unfair or improper manipulation of occupancy could ever justify denial of a claim of homestead exemption is an issue that need not be addressed. Under the circumstances of this case, the Court agrees with the DEBTOR that he did nothing that would justify denial of the exemption on equitable grounds. This is not a situation where the DEBTOR engaged in pre-bankruptcy title transfers in order to establish the ownership element of the homestead exemption statute. Neither did the DEBTOR abandon an established homestead in order to claim the exemption in the Behrends Street property.

Here, the opportunity for a homestead exemption, under very unusual circumstances, simply fell into his lap, and the DEBTOR cannot be faulted for taking advantage of the situation. Further, without deciding whether a period of actual occupancy could ever be “too short” to establish the homestead estate, in line with *Crocker*, this Court holds, under the circumstances of this case, that the DEBTOR’S brief occupancy is sufficient to qualify for the exemption.

That still leaves the question of intent, however. Though the statute itself does not mention intent, it is generally acknowledged that intent plays a critical role in the entitlement to a homestead exemption and that the debtor must occupy the premises with the intent to claim it as a homestead. *In re Ziegler*, 239 B.R. 375, 378 (Bankr.C.D.Ill. 1999).¹ The TRUSTEE concedes that the DEBTOR intended to claim the homestead exemption when he moved in. But, says the TRUSTEE, that intent was manufactured out of necessity, the same as the DEBTOR’S occupancy was manipulated to pre-date his bankruptcy filing. The bottom line, according to the TRUSTEE, is that the DEBTOR never really intended to make this run-down, soon-to-be-sold rental house, in a bad neighborhood, his “home.”

Judge William V. Altenberger engaged in a thorough analysis of the homestead “intent” requirement in *In re Wagenbach*, 232 B.R. 112 (Bankr.C.D.Ill. 1999). There, the debtors had relocated and were in the process of selling their Illinois homestead when they filed bankruptcy. A creditor objected to their claim of homestead exemption on the basis

¹ This Court has previously adopted the holding in *Ziegler*, that the exemption in proceeds from the sale of homestead property under 735 ILCS 5/12-906 is available only where the debtor has a good faith intent to reinvest the proceeds in a new homestead. *In re Sizemore*, No. 00-83455, decided April 26, 2001 (Unpublished).

that they did not live in the property at the time of filing and had no intent to move back into the property in the future. The court allowed the homestead exemption claim, relying upon the fact that the debtors had not yet established a new homestead and were, in fact, waiting for the sale of the Illinois home so that they could use the proceeds for that purpose, as well as the policy favoring liberal construction of the homestead exemption provision.

While *Wagenbach* is not on all fours with the case at bar for the issue there was whether the debtors had abandoned their homestead and not, as here, whether the homestead was in fact established, it nevertheless is instructive not only because it rejects a strict “future” occupancy intent requirement, but because it reiterates the philosophy of liberal interpretation that the statutory gray areas are construed in favor of homestead claimants, consistent with the remedial purpose of the statute. The purpose of the exemption is to provide the homeowner with necessary shelter or the means to acquire shelter notwithstanding difficult economic circumstances. *Bank of Illmo v. Simmons*, 142 Ill.App.3d 741, 492 N.E.2d 207, 97 Ill.Dec. 4 (5th Dist. 1986). Despite the unusual circumstances of the DEBTOR’S claim of homestead exemption, allowance of the exemption in this case, where the DEBTOR has no other home, is consistent with the purpose of the statute.

The DEBTOR’S testimony was honest and forthright. He testified that he moved in to the house intending to live there until circumstances required he leave, most likely because of the sale of the property. He made the house his residence and his “home,” if only for a relatively brief period. It may be by a hair’s breadth, but the DEBTOR’S intent is sufficient to qualify for the exemption. Under the facts of this case, this Court holds that the DEBTOR’S claim of homestead exemption is valid and proper and should be allowed.

This Opinion constitutes this Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate Order will be entered.

Dated: April 25, 2002.

THOMAS L. PERKINS
UNITED STATES BANKRUPTCY JUDGE

Copies to:

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Gary T. Rafool, 1600 First Financial Plaza, 411 Hamilton Blvd., Peoria, Illinois 61602

U.S. Trustee, 401 Main Street, Suite 1100, Peoria, Illinois 61602

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

IN RE:)
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DARDEN GRANT CRAWFORD,) No. 02-80176
)
Debtor.)

ORDER

For the reasons stated in an Opinion filed this day, IT IS HEREBY ORDERED that the TRUSTEE'S Objection to DEBTOR'S Claim of Exemption is DENIED. The DEBTOR'S claim of homestead exemption in the amount of \$7,500 in the real estate located at 1026 E. Behrends Avenue, Peoria, Illinois, is ALLOWED.

Dated: April 25, 2002.

THOMAS L. PERKINS
UNITED STATES BANKRUPTCY JUDGE

Copies to:
Charles E. Covey
Gary T. Rafool
U.S. Trustee